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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,089	08/22/2003	Gary Crawford	CITC-1-1010	9601
25315	7590	07/01/2005	EXAMINER	
BLACK LOWE & GRAHAM, PLLC 701 FIFTH AVENUE SUITE 4800 SEATTLE, WA 98104				HOGAN, JAMES SEAN
ART UNIT		PAPER NUMBER		
		3752		

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/646,089	CRAWFORD, GARY
	Examiner James S. Hogan	Art Unit 3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 August 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 8 and 10-14 is/are allowed.
- 6) Claim(s) 1,2,5 and 6 is/are rejected.
- 7) Claim(s) 3,4,7 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/30/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 9 objected to because of the following informalities: the term "sufficient to vaporize of the liquid bird repellent solution". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 recites the limitation "releasing a flow of air" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 3,793,762 to Stains.

Regarding claim 1, Stains teaches (see claims 1-5) a method of spraying a flow of pressurized air via a blower liquid through a into a jet (inlets 75 and 77) while a liquid is sent to an orifice (62) whereby the liquid is dispersed into the pressurized flow of air, and there is sufficient space that allows the flow of air to entrain droplets of the liquid into the flow of air. As for claim 2, the pressurized flow of air is sufficient to cause vaporization of the liquid. As per claim 5, the supply of pressurized air, and thus the

dispersing is supplied via a fan (blower 45). As per claim 6, the orifice includes a number of orifices (61-64) where a plurality of jets (note slotted inlets of 75 and 77, Figure 2). Stains does not teach the liquid to be a bird repellant. However it would have been obvious to one skilled in the art at the time the invention was made to have substituted the insecticide as specified by Stains ('762) with a bird repellent in order to dispense a repellant onto a substrate in order to discourage the nesting of birds.

***Suggested Claim***

The following allowable claim is suggested for the purpose of an interference:

A method for dispersing a bird repellant, comprising:  
providing a tank defining an interior space;  
placing a quantity of bird repellant in liquid form within the interior space of the tank;  
providing a nozzle assembly including at least one nozzle in fluid communication with the interior space of the tank, the at least one nozzle including a discharge aperture;  
providing an air-pressurizing source;  
atomizing a portion of the bird repellant by moving air over the discharge aperture of the at least one nozzle via the air-pressurizing source, thereby providing an atomized bird repellant; and  
filtering the atomized bird repellant through a filter member.

The suggested claim must be copied exactly, although other claims may be proposed under 37 CFR 1.605(a).

Applicant should make the suggested claim within ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer. Failure to do so will be considered a disclaimer of the subject matter of this claim under the provisions of 37 CFR 1.605(a). THE PROVISIONS OF 37 CFR 1.136(a) DO NOT APPLY TO THIS TIME PERIOD.

Claims 1,4 and 6 are considered unpatentable over this suggested claim.

#### ***Allowable Subject Matter***

Claims 8, and 10-12 are allowed.

Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 9 is objected to as having a minor informality (described above) but would be allowable if rewritten in a form that is corrected.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows:

U.S. Patent No. 6,857,214 to Pelisser, disclosing a scent dispersal apparatus

U.S. Patent No. 5,056,511 to Ronge, disclosing a method of atomizing

U.S. Patent No. 3,238,960 to Stevens, disclosing a fogger

U.S. Patent No. 3648,401 to Satins, disclosing an insecticide aerosol generator

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSH  
06/22/05



David A. Scherbel  
Supervisory Patent Examiner  
Group 3700